



Rep. Ann Williams

Filed: 3/26/2012

09700HB5008ham002

LRB097 17038 CEL 67903 a

1 AMENDMENT TO HOUSE BILL 5008

2 AMENDMENT NO. _____. Amend House Bill 5008 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The ID/DD Community Care Act is amended by
5 changing Section 2-201.5 as follows:

6 (210 ILCS 47/2-201.5)

7 Sec. 2-201.5. Screening prior to admission.

8 (a) All persons age 18 or older seeking admission to a
9 facility must be screened to determine the need for facility
10 services prior to being admitted, regardless of income, assets,
11 or funding source. In addition, any person who seeks to become
12 eligible for medical assistance from the Medical Assistance
13 Program under the Illinois Public Aid Code to pay for services
14 while residing in a facility must be screened prior to
15 receiving those benefits. Screening for facility services
16 shall be administered through procedures established by

1 administrative rule. Screening may be done by agencies other
2 than the Department as established by administrative rule.

3 (a-1) Any screening shall also include an evaluation of
4 whether there are residential supports and services or an array
5 of community services that would enable the person to live in
6 the community. The person shall be told about the existence of
7 any such services that would enable the person to live safely
8 and humanely in the least restrictive environment, that is
9 appropriate, that the individual or guardian chooses, and the
10 person shall be given the assistance necessary to avail himself
11 or herself of any available services.

12 (b) In addition to the screening required by subsection
13 (a), a facility shall, within 24 hours after admission, request
14 a criminal history background check pursuant to the Uniform
15 Conviction Information Act for all persons age 18 or older
16 seeking admission to the facility. Background checks conducted
17 pursuant to this Section shall be based on the resident's name,
18 date of birth, and other identifiers as required by the
19 Department of State Police. If the results of the background
20 check are inconclusive, the facility shall initiate a
21 fingerprint-based check, unless the fingerprint-based check is
22 waived by the Director of Public Health based on verification
23 by the facility that the resident is completely immobile or
24 that the resident meets other criteria related to the
25 resident's health or lack of potential risk which may be
26 established by Departmental rule. A waiver issued pursuant to

1 this Section shall be valid only while the resident is immobile
2 or while the criteria supporting the waiver exist. The facility
3 shall provide for or arrange for any required fingerprint-based
4 checks. If a fingerprint-based check is required, the facility
5 shall arrange for it to be conducted in a manner that is
6 respectful of the resident's dignity and that minimizes any
7 emotional or physical hardship to the resident. Fingerprint
8 vendors assisting in the initiation of fingerprint checks shall
9 comply with the provisions contained in Section 37 of the
10 Health Care Worker Background Check Act.

11 (c) If the results of a resident's criminal history
12 background check reveal that the resident is an identified
13 offender as defined in Section 1-114.01 of this Act, the
14 facility shall do the following:

15 (1) Immediately notify the Department of State Police,
16 in the form and manner required by the Department of State
17 Police, in collaboration with the Department of Public
18 Health, that the resident is an identified offender.

19 (2) Within 72 hours, arrange for a fingerprint-based
20 criminal history record inquiry to be requested on the
21 identified offender resident. The inquiry shall be based on
22 the subject's name, sex, race, date of birth, fingerprint
23 images, and other identifiers required by the Department of
24 State Police. The inquiry shall be processed through the
25 files of the Department of State Police and the Federal
26 Bureau of Investigation to locate any criminal history

1 record information that may exist regarding the subject.
2 The Federal Bureau of Investigation shall furnish to the
3 Department of State Police, pursuant to an inquiry under
4 this paragraph (2), any criminal history record
5 information contained in its files. The facility shall
6 comply with all applicable provisions contained in the
7 Uniform Conviction Information Act. All name-based and
8 fingerprint-based criminal history record inquiries shall
9 be submitted to the Department of State Police
10 electronically in the form and manner prescribed by the
11 Department of State Police. The Department of State Police
12 may charge the facility a fee for processing name-based and
13 fingerprint-based criminal history record inquiries. The
14 fee shall be deposited into the State Police Services Fund.
15 The fee shall not exceed the actual cost of processing the
16 inquiry.

17 (d) The Department shall develop and maintain a
18 de-identified database of residents who have injured facility
19 staff, facility visitors, or other residents, and the attendant
20 circumstances, solely for the purposes of evaluating and
21 improving resident pre-screening and assessment procedures
22 (including the Criminal History Report prepared under Section
23 2-201.6 of this Act) and the adequacy of Department
24 requirements concerning the provision of care and services to
25 residents. A resident shall not be listed in the database until
26 a Department survey confirms the accuracy of the listing. The

1 names of persons listed in the database and information that
2 would allow them to be individually identified shall not be
3 made public. Neither the Department nor any other agency of
4 State government may use information in the database to take
5 any action against any individual, licensee, or other entity
6 unless the Department or agency receives the information
7 independent of this subsection (d). All information collected,
8 maintained, or developed under the authority of this subsection
9 (d) for the purposes of the database maintained under this
10 subsection (d) shall be treated in the same manner as
11 information that is subject to Part 21 of Article VIII of the
12 Code of Civil Procedure.

13 (Source: P.A. 96-339, eff. 7-1-10; 97-38, eff. 6-28-11.)

14 Section 10. The Health Care Worker Background Check Act is
15 amended by changing Sections 15, 33, and 50 and by adding
16 Section 37 as follows:

17 (225 ILCS 46/15)

18 Sec. 15. Definitions. In this Act:

19 "Applicant" means an individual seeking employment with a
20 health care employer who has received a bona fide conditional
21 offer of employment.

22 "Conditional offer of employment" means a bona fide offer
23 of employment by a health care employer to an applicant, which
24 is contingent upon the receipt of a report from the Department

1 of Public Health indicating that the applicant does not have a
2 record of conviction of any of the criminal offenses enumerated
3 in Section 25.

4 "Direct care" means the provision of nursing care or
5 assistance with feeding, dressing, movement, bathing,
6 toileting, or other personal needs, including home services as
7 defined in the Home Health, Home Services, and Home Nursing
8 Agency Licensing Act. The entity responsible for inspecting and
9 licensing, certifying, or registering the health care employer
10 may, by administrative rule, prescribe guidelines for
11 interpreting this definition with regard to the health care
12 employers that it licenses.

13 "Disqualifying offenses" means those offenses set forth in
14 Section 25 of this Act.

15 "Employee" means any individual hired, employed, or
16 retained to which this Act applies.

17 "Fingerprint-based criminal history records check" means a
18 ~~livescan~~ fingerprint-based criminal history records check
19 submitted as a fee applicant inquiry in the form and manner
20 prescribed by the Department of State Police.

21 "Fingerprint vendor" means a person that offers,
22 advertises, or provides services to fingerprint individuals,
23 through electronic or other means, for the purpose of providing
24 fingerprint images and associated demographic data to the
25 Department of State Police for processing fingerprint-based
26 criminal history record information inquiries.

1 "Health care employer" means:

2 (1) the owner or licensee of any of the following:

3 (i) a community living facility, as defined in the
4 Community Living Facilities Act;

5 (ii) a life care facility, as defined in the Life
6 Care Facilities Act;

7 (iii) a long-term care facility;

8 (iv) a home health agency, home services agency, or
9 home nursing agency as defined in the Home Health, Home
10 Services, and Home Nursing Agency Licensing Act;

11 (v) a hospice care program or volunteer hospice
12 program, as defined in the Hospice Program Licensing
13 Act;

14 (vi) a hospital, as defined in the Hospital
15 Licensing Act;

16 (vii) (blank);

17 (viii) a nurse agency, as defined in the Nurse
18 Agency Licensing Act;

19 (ix) a respite care provider, as defined in the
20 Respite Program Act;

21 (ix-a) an establishment licensed under the
22 Assisted Living and Shared Housing Act;

23 (x) a supportive living program, as defined in the
24 Illinois Public Aid Code;

25 (xi) early childhood intervention programs as
26 described in 59 Ill. Adm. Code 121;

1 (xii) the University of Illinois Hospital,
2 Chicago;

3 (xiii) programs funded by the Department on Aging
4 through the Community Care Program;

5 (xiv) programs certified to participate in the
6 Supportive Living Program authorized pursuant to
7 Section 5-5.01a of the Illinois Public Aid Code;

8 (xv) programs listed by the Emergency Medical
9 Services (EMS) Systems Act as Freestanding Emergency
10 Centers;

11 (xvi) locations licensed under the Alternative
12 Health Care Delivery Act;

13 (2) a day training program certified by the Department
14 of Human Services;

15 (3) a community integrated living arrangement operated
16 by a community mental health and developmental service
17 agency, as defined in the Community-Integrated Living
18 Arrangements Licensing and Certification Act; or

19 (4) the State Long Term Care Ombudsman Program,
20 including any regional long term care ombudsman programs
21 under Section 4.04 of the Illinois Act on the Aging, only
22 for the purpose of securing background checks.

23 "Initiate" means obtaining from a student, applicant, or
24 employee his or her social security number, demographics, a
25 disclosure statement, and an authorization for the Department
26 of Public Health or its designee to request a fingerprint-based

1 criminal history records check; transmitting this information
2 electronically to the Department of Public Health; conducting
3 Internet searches on certain web sites, including without
4 limitation the Illinois Sex Offender Registry, the Department
5 of Corrections' Sex Offender Search Engine, the Department of
6 Corrections' Inmate Search Engine, the Department of
7 Corrections Wanted Fugitives Search Engine, the National Sex
8 Offender Public Registry, and the website of the Health and
9 Human Services Office of Inspector General to determine if the
10 applicant has been adjudicated a sex offender, has been a
11 prison inmate, or has committed Medicare or Medicaid fraud, or
12 conducting similar searches as defined by rule; and having the
13 student, applicant, or employee's fingerprints collected and
14 transmitted electronically to the Department of State Police.

15 ~~"Livescan vendor" means an entity whose equipment has been~~
16 ~~certified by the Department of State Police to collect an~~
17 ~~individual's demographics and inkless fingerprints and, in a~~
18 ~~manner prescribed by the Department of State Police and the~~
19 ~~Department of Public Health, electronically transmit the~~
20 ~~fingerprints and required data to the Department of State~~
21 ~~Police and a daily file of required data to the Department of~~
22 ~~Public Health. The Department of Public Health shall negotiate~~
23 ~~a contract with one or more vendors that effectively~~
24 ~~demonstrate that the vendor has 2 or more years of experience~~
25 ~~transmitting fingerprints electronically to the Department of~~
26 ~~State Police and that the vendor can successfully transmit the~~

1 ~~required data in a manner prescribed by the Department of~~
2 ~~Public Health. Vendor authorization may be further defined by~~
3 ~~administrative rule.~~

4 "Long-term care facility" means a facility licensed by the
5 State or certified under federal law as a long-term care
6 facility, including without limitation facilities licensed
7 under the Nursing Home Care Act, the Specialized Mental Health
8 Rehabilitation Act, or the ID/DD Community Care Act, a
9 supportive living facility, an assisted living establishment,
10 or a shared housing establishment or registered as a board and
11 care home.

12 (Source: P.A. 96-339, eff. 7-1-10; 97-38, eff. 6-28-11; 97-227,
13 eff. 1-1-12; revised 10-4-11.)

14 (225 ILCS 46/33)

15 Sec. 33. Fingerprint-based criminal history records check.

16 (a) A fingerprint-based criminal history records check is
17 not required for health care employees who have been
18 continuously employed by a health care employer since October
19 1, 2007, have met the requirements for criminal history
20 background checks prior to October 1, 2007, and have no
21 disqualifying convictions or requested and received a waiver of
22 those disqualifying convictions. These employees shall be
23 retained on the Health Care Worker Registry as long as they
24 remain active. Nothing in this subsection (a) shall be
25 construed to prohibit a health care employer from initiating a

1 criminal history records check for these employees. Should
2 these employees seek a new position with a different health
3 care employer, then a fingerprint-based criminal history
4 records check shall be required.

5 (b) On October 1, 2007 or as soon thereafter as is
6 reasonably practical, in the discretion of the Director of
7 Public Health, and thereafter, any student, applicant, or
8 employee who desires to be included on the Department of Public
9 Health's Health Care Worker Registry must authorize the
10 Department of Public Health or its designee to request a
11 fingerprint-based criminal history records check to determine
12 if the individual has a conviction for a disqualifying offense.
13 This authorization shall allow the Department of Public Health
14 to request and receive information and assistance from any
15 State or local governmental agency. Each individual shall
16 submit his or her fingerprints to the Department of State
17 Police in an electronic format that complies with the form and
18 manner for requesting and furnishing criminal history record
19 information prescribed by the Department of State Police. The
20 fingerprints submitted under this Section shall be checked
21 against the fingerprint records now and hereafter filed in the
22 Department of State Police criminal history record databases.
23 The Department of State Police shall charge a fee for
24 conducting the criminal history records check, which shall not
25 exceed the actual cost of the records check. The fingerprint
26 ~~livescan~~ vendor may act as the designee for individuals,

1 educational entities, or health care employers in the
2 collection of Department of State Police fees and deposit those
3 fees into the State Police Services Fund. The Department of
4 State Police shall provide information concerning any criminal
5 convictions, now or hereafter filed, against the individual.

6 (c) On October 1, 2007 or as soon thereafter as is
7 reasonably practical, in the discretion of the Director of
8 Public Health, and thereafter, an educational entity, other
9 than a secondary school, conducting a nurse aide training
10 program must initiate a fingerprint-based criminal history
11 records check requested by the Department of Public Health
12 prior to entry of an individual into the training program.

13 (d) On October 1, 2007 or as soon thereafter as is
14 reasonably practical, in the discretion of the Director of
15 Public Health, and thereafter, a health care employer who makes
16 a conditional offer of employment to an applicant for a
17 position as an employee must initiate a fingerprint-based
18 criminal history record check, requested by the Department of
19 Public Health, on the applicant, if such a background check has
20 not been previously conducted.

21 (e) When initiating a background check requested by the
22 Department of Public Health, an educational entity or health
23 care employer shall electronically submit to the Department of
24 Public Health the student's, applicant's, or employee's social
25 security number, demographics, disclosure, and authorization
26 information in a format prescribed by the Department of Public

1 Health within 2 working days after the authorization is
2 secured. The student, applicant, or employee must have his or
3 her fingerprints collected electronically and transmitted to
4 the Department of State Police within 10 working days. The
5 educational entity or health care employer must transmit all
6 necessary information and fees to the fingerprint ~~livescan~~
7 vendor and Department of State Police within 10 working days
8 after receipt of the authorization. This information and the
9 results of the criminal history record checks shall be
10 maintained by the Department of Public Health's Health Care
11 Worker Registry.

12 (f) A direct care employer may initiate a fingerprint-based
13 background check requested by the Department of Public Health
14 for any of its employees, but may not use this process to
15 initiate background checks for residents. The results of any
16 fingerprint-based background check that is initiated with the
17 Department as the requestor shall be entered in the Health Care
18 Worker Registry.

19 (g) As long as the employee has had a fingerprint-based
20 criminal history record check requested by the Department of
21 Public Health and stays active on the Health Care Worker
22 Registry, no further criminal history record checks shall be
23 deemed necessary, as the Department of State Police shall
24 notify the Department of Public Health of any additional
25 convictions associated with the fingerprints previously
26 submitted. Health care employers are required to check the

1 Health Care Worker Registry before hiring an employee to
2 determine that the individual has had a fingerprint-based
3 record check requested by the Department of Public Health and
4 has no disqualifying convictions or has been granted a waiver
5 pursuant to Section 40 of this Act. If the individual has not
6 had such a background check or is not active on the Health Care
7 Worker Registry, then the health care employer must initiate a
8 fingerprint-based record check requested by the Department of
9 Public Health. If an individual is inactive on the Health Care
10 Worker Registry, that individual is prohibited from being hired
11 to work as a certified nurse aide if, since the individual's
12 most recent completion of a competency test, there has been a
13 period of 24 consecutive months during which the individual has
14 not provided nursing or nursing-related services for pay. If
15 the individual can provide proof of having retained his or her
16 certification by not having a 24 consecutive month break in
17 service for pay, he or she may be hired as a certified nurse
18 aide and that employment information shall be entered into the
19 Health Care Worker Registry.

20 (h) On October 1, 2007 or as soon thereafter as is
21 reasonably practical, in the discretion of the Director of
22 Public Health, and thereafter, if the Department of State
23 Police notifies the Department of Public Health that an
24 employee has a new conviction of a disqualifying offense, based
25 upon the fingerprints that were previously submitted, then (i)
26 the Health Care Worker Registry shall notify the employee's

1 last known employer of the offense, (ii) a record of the
2 employee's disqualifying offense shall be entered on the Health
3 Care Worker Registry, and (iii) the individual shall no longer
4 be eligible to work as an employee unless he or she obtains a
5 waiver pursuant to Section 40 of this Act.

6 (i) On October 1, 2007, or as soon thereafter, in the
7 discretion of the Director of Public Health, as is reasonably
8 practical, and thereafter, each direct care employer or its
9 designee must provide an employment verification for each
10 employee no less than annually. The direct care employer or its
11 designee must log into the Health Care Worker Registry through
12 a secure login. The health care employer or its designee must
13 indicate employment and termination dates within 30 days after
14 hiring or terminating an employee, as well as the employment
15 category and type. Failure to comply with this subsection (i)
16 constitutes a licensing violation. For health care employers
17 that are not licensed or certified, a fine of up to \$500 may be
18 imposed for failure to maintain these records. This information
19 shall be used by the Department of Public Health to notify the
20 last known employer of any disqualifying offenses that are
21 reported by the Department of State Police.

22 (j) The Department of Public Health shall notify each
23 health care employer or long-term care facility inquiring as to
24 the information on the Health Care Worker Registry if the
25 applicant or employee listed on the registry has a
26 disqualifying offense and is therefore ineligible to work or

1 has a waiver pursuant to Section 40 of this Act.

2 (k) The student, applicant, or employee must be notified of
3 each of the following whenever a fingerprint-based criminal
4 history records check is required:

5 (1) That the educational entity, health care employer,
6 or long-term care facility shall initiate a
7 fingerprint-based criminal history record check requested
8 by the Department of Public Health of the student,
9 applicant, or employee pursuant to this Act.

10 (2) That the student, applicant, or employee has a
11 right to obtain a copy of the criminal records report that
12 indicates a conviction for a disqualifying offense and
13 challenge the accuracy and completeness of the report
14 through an established Department of State Police
15 procedure of Access and Review.

16 (3) That the applicant, if hired conditionally, may be
17 terminated if the criminal records report indicates that
18 the applicant has a record of a conviction of any of the
19 criminal offenses enumerated in Section 25, unless the
20 applicant obtains a waiver pursuant to Section 40 of this
21 Act.

22 (4) That the applicant, if not hired conditionally,
23 shall not be hired if the criminal records report indicates
24 that the applicant has a record of a conviction of any of
25 the criminal offenses enumerated in Section 25, unless the
26 applicant obtains a waiver pursuant to Section 40 of this

1 Act.

2 (5) That the employee shall be terminated if the
3 criminal records report indicates that the employee has a
4 record of a conviction of any of the criminal offenses
5 enumerated in Section 25.

6 (6) If, after the employee has originally been
7 determined not to have disqualifying offenses, the
8 employer is notified that the employee has a new
9 conviction(s) of any of the criminal offenses enumerated in
10 Section 25, then the employee shall be terminated.

11 (1) A health care employer or long-term care facility may
12 conditionally employ an applicant for up to 3 months pending
13 the results of a fingerprint-based criminal history record
14 check requested by the Department of Public Health.

15 (m) The Department of Public Health or an entity
16 responsible for inspecting, licensing, certifying, or
17 registering the health care employer or long-term care facility
18 shall be immune from liability for notices given based on the
19 results of a fingerprint-based criminal history record check.

20 (Source: P.A. 95-120, eff. 8-13-07.)

21 (225 ILCS 46/37 new)

22 Sec. 37. Fingerprint vendor fees. The Department of Public
23 Health shall establish a set fee for fingerprint services that
24 all approved fingerprint vendors offering fingerprint services
25 under this Act and Section 2-201.5 of the ID/DD Community Care

1 Act may not exceed. Any fingerprint vendor meeting the
2 requirements set forth in this Section shall be licensed by the
3 Department of Financial and Professional Regulation for
4 participation in both programs. Any vendor currently providing
5 fingerprint vendor services under the requirements of this Act
6 or the ID/DD Community Care Act shall be notified within 30
7 days after the effective date of this amendatory Act of the
8 97th General Assembly of the provisions contained in this Act
9 and Section 2-201.5 of the ID/DD Community Care Act and shall
10 be given 30 days after the date the fingerprint vendor is
11 notified of the established fee to notify the Department of
12 State Police of the fingerprints vendor's intent to seek
13 certification. All participating fingerprint vendors shall
14 comply with the established fee requirements within 30 days
15 after being notified that a fee has been set, regardless of the
16 status of their application for certification. Certification
17 qualifications shall include, but not limited to, the
18 following:

19 (1) two or more years of experience transmitting
20 fingerprints electronically to the Department of State
21 Police;

22 (2) successful transmission of the required data in a
23 manner agreed on by the Department of Public Health and the
24 Department of State Police;

25 (3) licensure by the State as a fingerprint vendor
26 under the Private Detective, Private Alarm, Private

1 Security, Fingerprint vendor, and Locksmith Act of 2004;

2 and

3 (4) an agreement to simultaneously provide fingerprint
4 services under multiple Acts.

5 All administrative rules adopted under this Section shall
6 be agreed upon by the Department of State Police and the
7 Department of Public Health.

8 (225 ILCS 46/50)

9 Sec. 50. Health care employer files. The health care
10 employer shall retain on file for a period of 5 years records
11 of criminal records requests for all employees. The health care
12 employer shall retain a copy of the disclosure and
13 authorization forms, a copy of the fingerprint ~~livescan~~ request
14 form, all notifications resulting from the fingerprint-based
15 criminal history records check and waiver, if appropriate, for
16 the duration of the individual's employment. The files shall be
17 subject to inspection by the agency responsible for inspecting,
18 licensing, or certifying the health care employer. A fine of up
19 to \$500 may be imposed by the appropriate agency for failure to
20 maintain these records. The Department of Public Health must
21 keep an electronic record of criminal history background checks
22 for an individual for as long as the individual remains active
23 on the Health Care Worker Registry.

24 (Source: P.A. 95-120, eff. 8-13-07.)

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.".